

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
KAISER ALUMINUM &
CHEMICAL CORP.

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 78-269

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal from a denial of a tax credit and exemption application No. 511-M-2, came before the Pollution Control Hearings Board, Chris Smith and David Akana (presiding) at a formal hearing in Tacoma on June 1, 1979 and in Lacey in July 13, 1979.

Appellant was represented by its attorney, Edward M. Lane; respondent was represented by Jeffrey D. Goltz, Assistant Attorney General.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

D.L./CO

FINDINGS OF FACT

I

In 1974 Kaiser Aluminum and Chemical Corporation (hereinafter "Kaiser") completed construction of a 10.7 million dollar air pollution control facility in Tacoma which was approved by the Department of Ecology (hereinafter "DOE") for air pollution control as well as tax credit purposes. The facility included a dry scrubbing system to service exhaust gases from all of Kaiser's aluminum potlines. After the installation of the dry scrubbing system, DOE has not found it necessary to require additional air pollution equipment at the Tacoma plant.

II

In the process of making aluminum, alumina is transported to the potlines where it is added at varying times to a reduction cell. There the alumina is melted in a chemical bath and siphoned off to other locations. Emissions from the process are released, some of which are gathered by a system of hoods and some of which escape to the pot room work area. The captured emissions are taken to a dry scrubber where clean alumina ore acts as a contact cleaning medium for fluorine and hydrocarbons. The alumina, then referred to as "reacted ore", is blended with clean ore before charging the pots. Upon being reentered into the bath, the hydrocarbons volatilize rapidly, resulting in some fine particulate matter escaping the cell hooding system. The air in the workroom is degraded as is the outside air when the gases pass through the roof vents on the pot roofs.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

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V

The proposed calciner will probably reduce the total particulate emissions to the ambient air from the plant below present levels, and in particular, reduce the emissions to the pot rooms.

VI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

In a tax credit and exemption matter, the burden of proof is borne by the appealing party. Tax credit and exemption statutes are construed strictly against the person seeking the exemption.

II

RCW 82.34.010(1) defines "facility" to include an "air pollution control facility."

(1) "Facility" shall mean an "air pollution control facility" or a "water pollution control facility" as herein defined: (a) "Air pollution control facility" includes any treatment works, control devices and disposal systems, machinery, equipment, structures, property or any part or accessories thereof, installed or acquired for the primary purpose of reducing, controlling or disposing of industrial waste which if released to the outdoor atmosphere could cause air pollution... (emphasis added).

"Air pollution" is defined in RCW 70.94.030(2):

"Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property.

"Air contaminants" include particulate matter. RCW 70.94.030(1).

DOE is authorized to adopt emission standards for the state.

RCW 70.94.331. DOE has adopted emission standards for appellant's industry. WAC 18-52-031. Emissions in excess of the allowable quantities and duration standards in such regulation are "air pollution"; emissions falling under such standards generally are not "air pollution." Kaiser currently meets the standards and is not causing "air pollution." Consequently its proposed calciner is not an "air pollution control facility" within the meaning of RCW 82.34.010(1)(a), and is not a qualified facility for approval by DOE. As such, DOE's decision should be affirmed.

III

Even assuming that the proposed calciner was a qualified facility, appellant cannot prevail.

The test for approving an application for a tax credit and exemption is set forth in RCW 82.34.030 and restated by DOE as follows:

The department shall approve any facility when:

- (1) It was installed or intended to be installed for the primary purpose of pollution control, and;
- (2) When it is operated or intended to be operated primarily for the purpose of pollution control, and;
- (3) When it is suitable, reasonably adequate, and meets the intent and purposes of chapter 70.94 or 90.48 RCW.

DOC 173-24-080. Brought to issue by the terms of the DOE decision is

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

WAC 173-24-080(1). A subsequent section, WAC 173-24-090, further¹
elaborates on the meaning of such requirement. Subsection (1) thereof
requires that a facility be installed in response to a requirement of
the DOE which is contained in a permit, order or specifically applicable
regulation, and that the facility meets such requirement.

The second subsection requires that a facility be installed to meet
the requirements of generally applicable regulations, and that the facility
meets such standard.

The third subsection requires that a facility be installed to
achieve the best known, available and reasonable means of preventing and
controlling air pollution, and meets or exceeds all applicable
governmental requirements. A facility must meet one of the three
subsections.

1. WAC 173-24-090 provides:

"A facility will be considered to be installed or intended
to be installed for the primary purpose of pollution control when:

(1) It was installed or intended to be installed in
response to a requirement of the department or a regional
or local air pollution control authority contained in a
permit, order or regulation which applies to the particular
industry or commercial establishment in question, and such
facility meets the requirements of such permit, order or
regulation, or,

(2) It was installed or intended to be installed to meet
the requirements of generally applicable air or water pollution
control standards or regulations promulgated by federal, state,
or regional agencies, and does in fact meet or exceed all such
applicable standards, or,

(3) It was installed or intended to be installed to
achieve the best known, available, and reasonable means of
preventing and controlling air and water pollution and
meets or exceeds all federal, state, and regional requirements
applicable to the facility in question. [Order DE 70-7, § 173-
24-090, filed 8/4/71.]

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

1 At the present time, Kaiser is meeting all applicable requirements
2 and has not been directed by DOE to construct further air pollution
3 control facilities. Thus, Kaiser cannot qualify under WAC 173-24-090
4 (1 and 2). Further, Kaiser cannot qualify under any of the three
5 subsections because the statute requires that applications for tax
6 exemption and credit certificates for industrial and manufacturing
7 facilities be made within one year after the effective date of specific
8 requirements promulgated by DOE. RCW 82.34.010(5) See International
9 Paper Co. v. Department of Revenue, 92 Wn.2d 277 (1979). WAC 18-52-031²,

11 2. The reason for respondent's denial of the instant application
12 was that the proposed calciner was not a requirement imposed by Ch.
18-52 WAC. WAC 18-52-031 provides.

13 "Emission standards. (1) The emission of gaseous fluorides and
14 particulate fluorides from all sources within a primary aluminum
15 plant shall be restricted so that the ambient air and forage
16 standards for fluorides are not exceeded outside the property
17 controlled by the aluminum plant owner or operator (see chapter
18 18-48 WAC).

19 (2) The total emission of particulate matter to the
20 atmosphere from the reduction process (pot-lines) shall be
21 reduced to the lowest level consistent with the highest and
best practicable technology available to the primary aluminum
industry, but in no case shall the emission of solid particulate
exceed fifteen pounds per ton of aluminum produced on a daily
basis.

(3) Visible emissions from all sources in a primary
aluminum mill excluding uncombined water droplets shall not
exceed for more than three minutes in any one hour, 20
percent opacity.

(4) Each aluminum mill shall take reasonable precautions
to prevent fugitive particulate material from becoming air borne:

(a) When handling, transporting or storing particulate
material on the mill site.

(b) When constructing, altering, repairing, or demolishing
a building, its appurtenances or a road;

(c) From an untreated open area. [Order DE 76-24, §
18-52- 31, filed 6/28/76.]

2 FINAL FINDINGS OF FACT,
3 CONCLUSIONS OF LAW AND
4 ORDER

1 effective in 1976, was not a newly imposed requirement to be met by
2 Kaiser at the time it submitted its application in 1973. Even if there
3 was such a requirement, appellant's application was not timely. RCW
4 82.34.010(5). Thus, the department's decision was correct, and should
5 be affirmed.

6 IV

7 Any Finding of Fact which should be deemed a Conclusion of Law
8 is hereby adopted as such.

9 From these Conclusions the Board enters this

10 ORDER

11 The action of the Department of Ecology disapproving tax credit
12 Application No. 511-M is affirmed.

13 DONE this 7th day of August, 1979.

14 POLLUTION CONTROL HEARINGS BOARD

15 David Akana
16 DAVID AKANA, Chairman

17 Chris Smith
18 CHRIS SMITH, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND
ORDER